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IN THE

Supreme Court of the United States

October Term, 1969.

No. 640.

JOHN J. SCARSELLETTI,
Petitioner,

v.

AETNA CASUALTY & SURETY COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, John J. Scarselletti, hereby petitions for a Writ of Certiorari to review the optional decision of the Supreme Court of Pennsylvania, Per Curiam Order granting the Respondent's Motion to Quash the Petitioner's Appeal taken from an interlocutory order of the Philadelphia Common Pleas Court #4, without a hearing or oral argument in a case of precedent. By Per Curiam Order, the Supreme Court of Pennsylvania denied a timely Petition for Reconsideration thereof.

OPINIONS BELOW.

No opinion was filed by the Supreme Court of Pennsylvania.

No opinion was filed by the Philadelphia Common Pleas Court #4.

JURISDICTION.

The Per Curiam Order sought to be reviewed was made and entered on February 27, 1969. An order denying a timely Petition for Reconsideration was made and entered on June 30, 1969. This Petition for Writ of Certiorari to the Supreme Court of Pennsylvania is filed within ninety days of the denial of the Petition for Reconsideration.

The Statutory provision believed to confer on this Court jurisdiction to review the judgment in question is 28 U. S. C. Sec. 1257(3).

QUESTIONS PRESENTED FOR REVIEW.

Whether the arbitrary decision of the Supreme Court of Pennsylvania, by Per Curiam Order granting the Respondent's Motion to Quash the Petitioner's Appeal taken from an interlocutory Order of the Philadelphia Common Pleas Court #4, which has a finality effect upon the Petitioner's case, without a hearing or oral argument in a case of precedent consistent with Due Process of Law as required by the Fourteenth amendment. Also: in view of the Court's scandalous behavior, lack of conformity of the Substantive and Procedural Due Process and Equal Protection of the Law, a denial of the Petitioner's rights guaranteed by the Fifth Amendment to the Constitution of the United States as embodied in the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS INVOLVED.

Amendment V.

"No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger: nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law: nor shall private property be taken for public use, without just compensation."

Amendment XIV.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE.

As the result of a fire at the Petitioner's home October 31, 1964, Action was initiated against the Aetna Casualty and Surety Company, the insurer, by a Summons in Assumpsit filed October 27, 1965 and served on the defendant November 1, 1965, Philadelphia Common Pleas No. 4, September Term, 1965, No. 2696.

The Petitioner filed a Complaint in Assumpsit, June 3, 1966 for the amount of $32,000.00, the limit of the insured's insurance policy. June 24, 1966 the defendant filed their answer to the Petitioner's Complaint. Case No. 2696.

January 3, 1967 the Petitioner filed his Entry of Appearance to act as his own counsel in this matter. I. P. P.

On January 10, 1967, a Praecipe was filed withdrawing Thomas E. Byrne, Jr., Esquire, as attorney for the defendant and the Entry of Appearance for Michael E. Quinlan, Esquire, on behalf of the defendant, Aetna Casualty and Surety Company.

On February 15, 1967, the Petitioner filed his first Petition for Special Listing C. T. L. #38802.

On March 13, 1967 the Defendant filed their Answer to the above Petition.

On March 17, 1967, the Petitioner filed Preliminary Objections to the Defendant's Answer.

On March 20, 1967, the first Petition for Special Listing was disallowed.

On June 8, 1967, the Petitioner filed his second Petition for Special Listing which was allowed by the Administrative Judge of the Philadelphia Common Pleas Court, July 11, 1967, thereby closing all future Discovery and Pleadings in case #2696.

The Petitioner was officially notified of the granting of the Special Listing by the Deputy Administrator for Civil Listings on August 2, 1967. On August 8, 1967, the

Petitioner notified the defendant that his Petition for Special Listing was granted July 11, 1967.

On August 16, 1967, the Petitioner initiated a second suit by a Complaint in Assumpsit for $100,000.00 which cause of action being of collateral issue for aforementioned suit No. 2696, Philadelphia Common Pleas June Term, 1967, Case No. 5528.

On September 12, 1967, the defendant filed their Answer to the Petitioner's Complaint of the second suit, #5528.

On September 8, 1967, the Petitioner sent the defendant a stipulation to consolidate the two above mentioned cases, by agreement of counsel but no immediate response was received from the defendant in regard to the acceptance of this stipulation.

On September 14, 1967, the defendant filed a rule on the Petitioner why the defendant may not file an amended answer to case No. 2696. However, the Petitioner was not notified by the defendant of the filing of the above-mentioned Petition nor was a copy of same sent to the Petitioner.

On September 22, 1967 the Petitioner filed a Rule on the defendant to Show Cause why case #2696 should not be consolidated with Philadelphia Common Pleas, June Term, 1967, #5528, with the scheduled hearing of this Petition October 10, 1967.

On September 22, 1967, the Petitioner sent the defendant a copy of the above-mentioned Petition and requested a copy of the defendant's Petition for Leave to Amend Answer filed on September 14, 1967 which the Petitioner learned of through his constant examination of the docket entries.

On September 22, 1967, the Petitioner received from the defendant the original Stipulation to Consolidate properly executed for court approval.

On September 28, 1967, the Petitioner sent the above mentioned Stipulation to the Court for approval and was filed September 29, 1967. In view of the Stipulation to Consolidate by agreement of counsel filed this date, the Petition to Consolidate already scheduled for a hearing Oct. 10, 1967 should have been withdrawn by the Motion Court.

Due to the special preference listing granted July 11, 1967, case No. 2696 was put in the jury trial pool September 28, 1967. The Petitioner requested to see the calendar judge of the court in regard to the listing of case No. 2696 for trial in respect to the defendant's scheduled hearing of October 10, 1967 on their Petition for Leave to Amend Answer, filed September 14, 1967. The calendar judge granted the defendant's request for discovery time for case No. 5528 which was consolidated with case No. 2696 and the special listing for case No. 2696 was stricken for the defendant to complete his discovery, but no action for further discovery has been taken by the defendant to the present time.

On September 28, 1967, the Petitioner received his copy of the defendant's Petition to Amend Answer, filed September 14, 1967, as previously requested by the Petitioner. The copy was neither conformed as to being a true copy or with notice to plead within 20 days. Because the hearing of this Petition was scheduled for October 10, 1967, the Petitioner should have received his copy sooner in order to afford him the proper time to answer the pleading.

On October 10, 1967, the court ordered a rule absolute to file an amended answer and the Petition to Consolidate which was supposedly withdrawn and not mentioned at the hearing is moot.

As a result of the orders of October 10, 1967, the Petitioner filed an appeal and affidavit in the Supreme Court of Pennsylvania on October 19, 1967 and a writ of certiorari

was issued for the records of the lower court, No. 133, January Term, 1968.

On October 19, 1967, the Petitioner sent to the defendant, Notice of Appeal and Praecipe for Appearance in the above captioned case for his signature of acceptance of same to be returned to the Petitioner for filing in the lower court. The acceptance was signed by the defendant and returned to the Petitioner for filing, November 17, 1967.

On October 19, 1967, the Petitioner sent to the Honorable Edward J. Bradley, Judge of the Common Pleas Court, Notice of Appeal and Acceptance of Service for his signature of same which was also to be returned to the Petitioner for filing, but no response was received.

On October 19, 1967 a Writ of Certiorari was issued to the Common Pleas Court for the records of this case but the records were not made available to the court for review.

On November 17, 1967 the Appellee filed their entry of appearance in the Supreme Court of Pennsylvania.

On November 20, 1967, the Petitioner filed a Petition for Continuance to the April, 1968 session at Philadelphia.

On December 22, 1967, the Appellee filed their answer to the Petitioner's Petition for Continuance with New Matter. The Petitioner's copy was sent by ordinary mail and the mailing was delayed by the Appellee, therefore, when received by the Petitioner he had only two days, due to the Statute of Limitations, in which to respond to the New Matter. The New Matter was the Appellee's request to Quash the Appeal; therefore, it had great significance and importance not only with the Petitioner's Petition for Continuance but its affect upon the case No. 5528 in the lower court.

December 28, 1967, the Petitioner filed his reply to the Appellee's New Matter.

January 9, 1968, The Supreme Court filed an order denying the Petitioner's Petition for Continuance and

granting the Appellee's request by Quashing the Petitioner's Appeal, Per Curiam.

January 19, 1968 the Petitioner's Petition for Reconsideration was denied February 19, 1968, per curiam.

On May 15, 1968, the Petitioner filed in the Philadelphia Common Pleas Court Preliminary Objections to the Respondent's Amended Answer to the Petitioner's original pleadings.

On May 20, 1968, the Petitioner filed a Petition for Writ of Certiorari to the Supreme Court of Pennsylvania in the Supreme Court of the United States, #1452, to review the Per Curiam order of January 9, 1968 and Per Curiam order of February 19, 1968.

On May 27, 1968, the Respondent filed Answer to Petitioner's Preliminary Objections to the Respondent's Amended Answer with New Matter.

On June 3, 1968, the Petitioner filed a Reply to the Respondent's Answer to Petitioner's Preliminary Objections with New Matter.

On June 10, 1968, the Supreme Court of the United States denied the Petitioner's Writ of Certiorari to the Supreme of Pennsylvania filed May 20, 1968.

On June 17, 1968, Notice of Order of Supreme Court of United States as of #1452, October Term, 1967 Dated June 10, 1968, denying certiorari filed in Philadelphia Common Pleas Court.

On July 2, 1968, the Honorable Judge Bernard J. Kelly dismissed the Petitioner's Preliminary Objections without prejudice to resubmit within 30 days and Respondent is directed to file an answer within 15 days from date hereof.

On July 16, 1968, the Respondent filed their amended answer to the Petitioner's original pleadings.

On July 31, 1968, the Petitioner resubmitted Preliminary Objections to the Respondent's filed amended answer.

On August 16, 1968, the Respondent filed a answer to the Petitioner's Preliminary Objection with New Matter.

On August 30, 1968, the Petitioner filed a Reply to the Respondent's Answer to the Petitioner's Preliminary Objections with New Matter.

On September 10, 1968, the Petitioner filed a Petition for Rehearing of the Petition for Writ of Certiorari to the Supreme Court of Pennsylvania in the Supreme Court of the United States, which was denied October 14, 1968.

On October 22, 1968, after many delays the Petitioner's Preliminary Objections to the Respondent's amended answer was heard in the Philadelphia Motion Court, Common Pleas Court #4 before the Honorable Judge R. P. Alexander, who stated after the hearing that an immediate decision would be rendered in a few days. After a reasonable time had passed the Petitioner made several requests for the Court's decision, which wasn't rendered until December 17, 1968, an interlocutory order dismissing the Petitioner's Preliminary Objections to the Respondent's filed amended Answer. Due to the many delays of the hearing and the long time for the decision to be rendered, four months had elapsed and it was too late to file an appeal in the Supreme Court of Pennsylvania for the Fall session.

On November 8, 1968, the Petitioner sent to the Clerk of the Supreme Court of the United States by certified mail a new and timely petition for Rehearing of the Petition for Writ of Certiorari to the Supreme Court of Pennsylvania per rule 58-4. The Petition and all accompanying documents were returned to the Petitioner without being filed in that Court for Judicial review.

On December 26, 1968, the Petitioner filed an Appeal in the Supreme Court of Pennsylvania taken from the interlocutory order of December 17, 1968 dismissing the Petitioner's Preliminary Objections to the Respondent's Amended Answer. The Appeal was listed for the January Term, 1969, #219.

On December 26, 1968, the Petitioner sent by certified mail to the Respondent Notice of Appeal and Praecipe for Appearance, which was to be signed and returned for filing.

On December 26, 1968, the Petitioner sent by certified mail to the Honorable Judge R. P. Alexander, notice of Appeal and Acceptance of Service, which was to be signed and returned for filing. Also, a request for an opinion concerning the Court's decision of December 17, 1968, which was being Appealed. Several requests for the Court's opinion were made, but none were received or filed.

On January 10, 1969, the Respondent filed a Motion to Quash the Petitioner's Appeal and for reimbursement of costs and fees.

On January 14, 1969, the Petitioner filed an answer to the Respondent's Motion to Quash the Appeal and reimbursement of costs and fees.

After many requests by the Petitioner for a decision by the Supreme Court of Pennsylvania, a decision was rendered in the form of a Per Curiam Order, February 27, 1969 granting the respondent's Motion to Quash the Petitioner's Appeal and denying the reimbursement of costs and fees.

On March 7, 1969, the Petitioner filed a Petition for reconsideration of Per Curiam Order dated February 27, 1969 granting the Respondent's Motion to Quash the Appeal.

On March 14, 1969, The Respondent filed an answer to the petition for Reconsideration with New Matter.

On March 19, 1969, The Petitioner filed a Petition to Amend incorrect docket entry.

On March 21, 1969, the Respondent filed an answer to Petition to Amend incorrect docket entry with new matter for reimbursement of costs and fees.

On March 27, 1969, the Petitioner filed a Replication to the Respondent's Answer to Petition to Amend Incorrect

Docket Entry with New Matter for reimbursement of costs and fees.

After many requests by the Petitioner for a decision by the Supreme Court of Pennsylvania in regard to the Petitioner's Petition for Reconsideration and Petition to Amend Incorrect Docket Entry, a decision was finally rendered by Per Curiam Order June 30, 1969 denying the Petitioner's Petition for Reconsideration. Due to the delays in making a decision in the Supreme Court of Pennsylvania six months had elapsed thereby prolonging the submittal of this Appeal to the Supreme Court of the United States for the fall session instead of the spring session of this year.

REASONS FOR GRANTING WRIT.

It is well established that the Fifth Amendment is made obligatory on the State Courts by the Fourteenth Amendment and includes not only the rights of Due Process of the Law but also guarantees persons within its jurisdiction the Equal Protection of the Law.

Because the Petitioner is not an attorney and acting as his own counsel in this case, he has suffered many indignities and setbacks in the course of due process of the law which the Petitioner feels is a violation of the Procedural Due Process and Equal Protection clauses of the Constitution. In view of these violations the Substantive Due Process of the Law has been violated; therefore, depriving the Petitioner of Life, Liberty, or Property and Equal Protection of the Law without due process as guaranteed by the Constitution.

It is the opinion of the Petitioner that the Court has shown a bias and prejudicial attitude toward the Petitioner to his detriment and did irreparable harm to the Petitioner's legal position by their arbitrary decision, Per Curiam Order of February 27, 1969 granting the Respondent's Motion to Quash the Petitioner's Appeal without a hearing or oral argument in a case of precedent which is a denial of the Petitioner's Constitutional rights. Especially; when you consider the fact the Petitioner's Appeal was taken from an interlocutory order that would render the Petitioner's suit in the lower Court moot, because of its finality effect upon the Petitioner's case, yet to be tried in the lower Court, due to the Respondent's legal maneuvering and many delays. This scandalous action and harassment of the Petitioner to discourage him from proceeding with his fight for legal survival, judicial justice and preservation of his Constitutional rights as guaranteed by the Fifth and Fourteenth

Amendments of the Constitution constitutes a flagrant miscarriage of justice, which should be rectified by the Supreme Court of the United States, as the governing body for such actions, in the interest of the Public and their general welfare in a case of precedent, and the preservation of the high Court's standards as set by the Constitution for our legal system.

The breaches of the rules of civil procedure and scandalous behavior by the Court's agency are a violation of the Procedural Due Process Clause of the Constitution of the United States, and the Court's arbitrary decision, Per Curiam Order of February 27, 1969 granting the Respondent's Motion to Quash the Petitioner's Appeal; when it is in fact an appeal of an interlocutory order with a finality effect upon the Petitioner's case, is a violation of the Substantive Due Process Clause of the Fifth Amendment to the Constitution of the United States as embodied in the Fourteenth Amendment. This being a case of precedent, the Public interest and the general welfare of the Country are at stake; therefore, this petition for Writ of Certiorari to the Supreme Court of Pennsylvania should be granted.

CONCLUSION.

For the foregoing reasons and the good of the Public and general welfare of the Country, this petition for Writ of Certiorari to the Supreme Court of Pennsylvania should be granted.

Respectfully submitted,

JOHN J. SCARSELLETTI, I. P. P.,
Attorney for Petitioner.

CERTIFICATE.

I hereby certify that within Petition is filed in good faith and not for the purpose of delay.

JOHN J. SCARSELLETTI, I.P.P.,
Attorney for Petitioner.

APPENDIX.

IN THE
SUPREME COURT OF PENNSYLVANIA
FOR THE EASTERN DISTRICT.

#219, JANUARY TERM, 1969.

JOHN J. SCARSELLETTI

v.

AETNA CASUALTY & SURETY COMPANY

Common Pleas Court #4 for the County of Philadelphia
#2692, September Term, 1965, C. T. L. #38802.

March 7, 1969. Appellant filed Petition for Reconsideration of Per Curiam Order dated February 27, 1969 granting the Appellee's Motion to Quash the Appeal.

ORDER.

June 30, 1969. Petition denied. Per curiam.

IN THE

SUPREME COURT OF PENNSYLVANIA

FOR THE EASTERN DISTRICT.

#219, JANUARY TERM, 1969.

JOHN J. SCARSELLETTI

v.

AETNA CASUALTY & SURETY COMPANY

Common Pleas Court #4 for the County of Philadelphia
#2692, September Term, 1965, C. T. L. #38802.
December 26, 1968. Appeal Filed.

John J. Scarselletti,
Appellant, I. P. P.

January 10, 1969. Appellee filed Motion to Quash Appeal and for reimbursement of costs and fees.

ORDER.

February 27, 1969. Motion granted as to Quashing Appeal only, Motion for reimbursement of costs and fees denied.

Per Curiam

IN THE

COMMON PLEAS COURT #4.

OCTOBER 22, 1968.

JOHN J. SCARSELLETTI,

Petitioner

v.

AETNA CASUALTY & SURETY COMPANY

Common Pleas Court #4, September Term, 1965, #2696, C. T. L. #38802.

July 31, 1968. Plaintiff Resubmitted Preliminary Objections to Defendant's Amendment Answer filed.

ORDER.

December 17, 1968. Preliminary Objections are dismissed. Per Hon. Raymond Pace Alexander.

IN THE

COMMON PLEAS COURT #4.

JUNE 4, 1968.

JOHN J. SCARSELLETTI,

Petitioner

v.

AETNA CASUALTY & SURETY COMPANY

Common Pleas Court #4, September Term, 1965, #2696, C. T. L. #38802.

May 15, 1968. Plaintiff's Preliminary Objections to Defendant's Amended Answer Filed.

ORDER.

July 2, 1968. Plaintiff's Preliminary Objections dismissed without prejudice, to resubmit within 30 days. Defendant is directed to file an answer within 15 days from date hereof.

Per Hon. Bernard J. Kelly.